



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 7401-99

26 February 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 9 January 1974 for two years at age 18. The record reflects that while you were in recruit training, the director of the neuropsychiatric unit recommended to the depot aptitude board that you be separated by reason of unsuitability due to a character and behavior disorder. However, the commanding officer recommended that you be retained, stating that although you had gone through a difficult period as a result of pressing personal problems at home, the difficulties had been resolved and your performance had improved markedly. On 28 February 1974, the aptitude board recommended that you be returned to duty.

You completed recruit training and were assigned to Camp Lejeune where you served without incident until 5 August 1974, when you were convicted by summary court-martial of two periods of unauthorized absence (UA) totalling about 66 days, from 1-17 May

and 28 May to 17 July 1974. You were sentenced to 30 days of hard labor without confinement and restriction, and a forfeiture of \$100.

In September 1974, you began a series of three UAs from 9-12 September 1974, 16 September 1974 to 18 January 1975, and 3 March to 9 June 1975.

On 30 June 1975 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the foregoing three periods of UA totalling 224 days. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Thereafter, you signed a statement acknowledging that you would receive an undesirable discharge. On 4 July 1975 the discharge authority approved the request and directed an undesirable discharge. You were so discharged on 21 July 1975.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, low test scores, and the fact that it has been more than 24 years since you were discharged. The Board noted your contention that when you requested discharge for the good of the service, you were led to believe that you would receive a general discharge. However, your contention is not supported by the evidence of record. The Board concluded that the foregoing factors were insufficient to warrant recharacterization of your discharge given your conviction by summary court-martial of 66 days UA and the fact that you accepted discharge rather than face trial by court-martial for three periods of UA totalling more than seven months. You have provided neither probative evidence nor a convincing argument in support of your application. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. The Board thus concluded your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director